REMARKS

Summary

Claims 1-3, 5, 7-16, 19 and 20 stand in this application. Claims 4, 6, 17 and 18 have been canceled without prejudice. Claim 3 is currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Claim Objections

At page 2, paragraph 4 claim 3 was objected to for informalities. Applicant respectfully requests that claim 3 has been amended in accordance with the Office Action and respectfully requests removal of the objection.

35 U.S.C. § 103

At page 3, paragraph 6 claims 1, 5, 8, 9, 13, 14, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,180,892 to Tackin (hereinafter "Tackin") in view of U.S. Patent No. 6,862,298 to Smith et al (hereinafter "Smith"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 5, 8, 9, 13, 14, 19 and 20. Therefore claims 1, 5, 8, 9, 13, 14, 19 and 20 define over Tackin and Smith whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

> determining an end to said voice information based on said measurements and a delay interval; and
> adjusting said delay interval to correspond to an average packet delay time.

As correctly noted in the Office Action, the above-recited language is not disclosed by Tackin. According to the Office Action, the missing language is disclosed by Smith at the Abstract and column 2, lines 44-50. Applicant respectfully disagrees.

Applicant respectfully submits that Smith fails to disclose the missing language of the claimed subject matter. For example, Smith at the given cite, in relevant part, states

> A jitter buffer manager monitors packet arrival times from the network and determines at least one time varying variation parameter which measures a variation in transit delay time among arriving packets. The jitter buffer manager

> also adaptively controls jitter buffer size in response to the variation parameter, which is calculated from time to time. A speed control module responds to a control signal from the jitter buffer manager by modifying the rate of serial data transfer (rate of consumption) from the jitter buffer, to compensate for changes in the jitter buffer's storage size and maintain a predetermine rate of audio output. Preferably, the speed control also either augments or discards packet data to compensate for the changes in jitter buffer size, and does so in a manner which maintains audio output with acceptable natural human speech characteristics.
>
> In a preferred embodiment, the jitter buffer manager also calculates an average packet delay and compares this delay with a reference delay corresponding to a temporally centered position in the jitter buffer. The manager then adjusts the rate of transfer of packets from the jitter buffer to adaptively align the jitter buffer's center position with the (time varying) average packet delay.

Smith arguably discloses a jitter buffer manager that adaptively aligns the jitter buffer's center position with the average packet delay. The jitter buffer manager arguably manages the size of a jitter buffer after the determination of whether the data contains voice information. Further, the jitter buffer manager is using the average packet delay to align the center of the jitter buffer. By way of contrast, the claimed subject matter discloses "determining whether said audio information represents voice information" prior to "buffering said audio information in a jitter buffer." During the determination, the claimed subject matter determines "an end to said voice information based on said measurements and a delay interval" and adjusts "said delay interval to correspond to an average packet delay time." The claimed subject matter adjusts the delay interval based upon an average packet delay time prior to buffering audio information in the jitter buffer. Further, the claimed subject matter is adjusting a delay interval whereas Smith is arguably directly manipulating the center of a jitter buffer. Therefore, Smith fails to disclose, teach or suggest the missing language. Consequently,

Tackin and Smith, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 2, 3, 5, 7 and 8 is respectfully requested. Claims 2, 3, 5, 7 and 8 also are non-obvious and patentable over Tackin and Smith, taken alone or in combination, at least on the basis of their dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 9 and 14 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 9 and 14 are non-obvious and are patentable over Tackin and Smith for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 9 and 14. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 10-13, 15, 16, 19 and 20 that depend from claims 9 and 14, and therefore contain additional features that further distinguish these claims from Tackin and Smith, whether taken alone or in combination.

Conclusion

For at least the above reasons, Applicant submits that claims 1-3, 5, 7-16, 19 and 20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized

by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

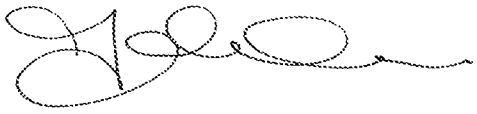
Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5, 7-16, 19 and 20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



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Under 37 CFR 1.34(a)

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